

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3660

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas Miller, Chair
Heather Anderson, ADR Subcommittee Counsel, 415-865-7691

DATE: October 16, 2002

SUBJECT: Alternative Dispute Resolution: Petition to Request Trial de Novo
After Judicial Arbitration (approve form ADR-102) (Action
Required)

Issue Statement

Currently there is no Judicial Council form for making a request for trial de novo after judicial arbitration, so each party must draft his or her own request. This is time-consuming for the parties and makes it more difficult for court staff to process the requests.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003, approve form ADR-102, *Request for Trial Novo After Judicial Arbitration*, for optional use.

Rationale for Recommendation

California statutes establish a court-connected, nonbinding arbitration program for civil cases valued at \$50,000 or less, known as judicial arbitration. (Code Civ. Proc. §1141 et seq.) Under these statutory provisions, within 30 days after the judicial arbitrator has issued an award, a party may request a trial de novo. (Code Civ. Proc., § 1141.20.) Proposed new form ADR-102 would be an optional form for this purpose.

The proposed form is attached at pages 4-5.

Alternative Actions Considered

The committee considered whether the request should be a mandatory or an optional form. Because the principal goal is to assist litigants by creating a form that they can use, not to ensure that all petitions submitted to the court are in a standard format, the committee concluded that an optional form was more appropriate.

Comments From Interested Parties

The form was circulated for comment in the spring of 2002. We received a total of 15 responses to the invitation to comment. Ten commentators supported the proposal without comment, three indicated they would support the proposal only if it was amended, and two opposed the proposal. A chart listing all of the comments and the committee's responses is attached at page 6.

Judge Helen Bendix of the Superior Court of Los Angeles County and Julie Bronson, the ADR Administrator of that court, opposed the proposed form based on concerns about whether a fee should be charged for the filing of requests for a trial de novo after judicial arbitration. As circulated for comment, the "Instructions" box on the proposed form included the statement "A filing fee may be required." Noting that there is a dispute among some of their court locations about the appropriateness of charging the \$23 motion fee for a trial de novo request, these commentators suggested that the statement on the form contributes to confusion over this issue. They asked that the form clarify whether a fee is or is not appropriate. The committee concluded that this form is not the proper vehicle for addressing the appropriateness of such a fee. Forms typically do not address the fees to be charged for filing. The committee deleted the sentence "A filing fee may be required." from the notice box on the form so as not to add to any confusion concerning this issue.

Both Julie Bronson, the ADR Administrator for the Superior Court of Los Angeles County and George Dutch of the Superior Court of San Diego County, recommended that the form include a statement that the requestor is rejecting the judicial arbitration award. Because neither the judicial arbitration statutes nor the rules refer to "rejecting" the award, the committee declined to add the suggested language. However, the committee does believe it is important to provide litigants with clear information about the consequences of not filing a request. Therefore, the committee added another sentence to the "Instructions" box, stating: "If you do not request a trial de novo, the arbitrator's award will be final and it will be entered as the judgment in the case."

Both Richard Millar, President of the Orange County Bar Association, and Elena Simonian, Court Administrator for the Superior Court of San Francisco County, suggested it would be helpful if the form provided a place to indicate whether a

court trial or a jury trial is being requested. Although the committee agrees that it is important to know whether a jury or court trial is being requested, the members believe that under the new case management rules this information would already be incorporated into the case management order, and it would be confusing for the form to also request the information. Therefore, the committee declined to add the question to the form.

Implementation Requirements and Costs

This form should both save litigants the time and expense of inventing individualized requests and assist the court in processing request for trial de novo. There should be no appreciable costs for the courts.

Attachments

Copies of the request for a trial de novo must be served on all parties and the request and a proof of service must be filed with the clerk.

Code of Civil Procedure, § 1141.20
Cal. Rules of Court, Rule 1616

SHORT TITLE: 	CASE NUMBER:
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PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Request for Trial De Novo After Judicial Arbitration* as follows (*complete either a or b*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary court of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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Comments for SPR02-06
Request for Trial de Novo After Judicial Arbitration

	Commentator	Position	Comment on behalf of group?	Proposed Comment	Committee Response
1.	Hon. Helen Bendix Judge of the Superior Court of Los Angeles County	N	N	I agree with the comments submitted by Ms. Bronson as to the need to clarify whether a TDN filing fee may be collected when a trial de novo is requested. I second her suggestion that an official interpretation of GC 26830 be obtained. The current lack of clarity — which the proposed form perpetuates by indicating that “[a] filing fee may be required”—has led to inconsistent practices even within the same court, as identified in Ms. Bronson’s comments.	The committee believes that this form is not the right vehicle for trying to clarify the appropriateness of charging a fee for a trial de novo request. Forms typically do not address the fees to be charged for filing. The committee has deleted the sentence “A filing fee may be required” from the form so as not to add to any confusion concerning this issue.
2.	Julie Bronson Administrator Superior Court of Los Angeles County	N	N	<p>Superior Court of Los Angeles County ADR has been working on a uniform and consistent courtwide <i>Request for Trial Novo</i> (TDN) form. In addition, I have been working with Peggy Shuttleworth and Tom Zecchini to resolve the current variance of practice with regard to charging a TDN fee. The proposed Judicial Council form, ADR-102, would assist LASC in achieving uniformity; however, concern exists regarding reference to any fee associated with filing the ADR-102.</p> <p>With regard to the “Instructions” box, I am seeking clarification as to the statement, “A filing fee may be required.” Verbiage used in the ADR-102 may prove critical in relation to whether or not the court should charge a TDN filing fee.</p> <p>The current LASC fee schedule does not specifically provide for a TDN filing fee. Prior to unification, the superior court and former Los Angeles Municipal Court charged a TDN filing fee of \$23. This fee was charged under LASC Fee Schedule, Civil Filing Fees,</p>	See response to Judge Bendix’s comments above.

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				<p>13, which covers “notice of motion, any other paper requiring a hearing subsequent to the first paper (with specified exemptions) or application for renewal of judgment” in accordance with Government Code section 26830. However, this was not the practice in all former municipal courts. At this time, there is a variance of practice in the courts with regard to charging a TDN fee.</p> <p>The proposed <i>Request for Trial Novo After Judicial Arbitration</i> [ADR-102 (Draft-2)] states: “(Party type) (Name) requests trial de novo in this action, under Code of Civil Procedure section 1141.20 and California Rules of Court, rule 1616.” The proposed language by Judicial Council is open to interpretation and confusion, especially by pro per litigants.</p> <p>A form previously used by LASC, <u>Rejection of Arbitrator’s Award and Request for Trial Novo</u> (LA-199), states:</p> <p>“PLEASE BE ADVISED that (party type, name), hereby rejects the award of arbitrator and elects to have a trial in the above-captioned matter. The (party type) herein hereby requests trial de novo pursuant to rule 1616(a) of the California Rules of Court.”</p> <p>The verbiage used by LASC is more specific language that indicates the party is rejecting the award and asking for a trial.</p>	<p>Because neither the judicial arbitration statutes nor the rules refer to “rejecting” the award, the committee declined to add the suggested language. However, the committee does believe it is important to provide litigants with clear information about the consequences if a request is not filed. Therefore, the committee added another sentence to the “Instructions” box, stating: “If you do not request a trial de novo, the arbitrator’s award will be final and it will be entered as the judgment in this case.”</p>
3.	George Duitch	AM	N	The court agrees with the proposed changes if	See response to Ms. Bronson’s comments

Comments for SPR02-06
Request for Trial de Novo After Judicial Arbitration

	Commentator	Position	Comment on behalf of group?	Proposed Comment	Committee Response
	Superior Court of San Diego County			modified to have the form say “Plaintiff, Defendant, Other rejects the award of the arbitrator and requests trial de novo.”	above.
4.	Lori Meseke Judicial Council Liaison Chair, San Joaquin County Bar Association	A	N	No comment.	No response necessary.
5.	Richard W. Millar President, Orange County Bar Association	AM	Y	This new form is a good idea. However, Code of Civil Procedure section 1141.20(b) states that any party may elect a trial de novo “by court or jury, both as to law and facts.” This form should be modified to include the party’s request in these regards.	While the committee agrees that it is important to know whether a jury or court trial is being requested, under the new case management rules this information will already be incorporated into the case management order. The committee believes that it would create confusion for this form to also request this information.
6.	Andrea Nelson Superior court of Butte County	A	N	No comment.	No response necessary.
7.	Lenor R. Noll Deputy Executive Officer Superior Court of Monterey County	A	N	There appears to be a lot of wasted space on the form ... Maybe larger font?	Some additional information and spacing have been added to the form.
8.	Hon. Harry R. Sheppard Superior Court of Alameda County	A	N	No comment.	No response necessary.
9.	Lee Silva-Combs Deputy Court Executive Officer Superior Court of Monterey County	A	N	No comment.	No response necessary.
10.	Elena Simonian	AM	N	There should be an indication on the form if this will	While the committee agrees that it is

Comments for SPR02-06
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	Court Administrator Superior Court of San Francisco County			be a jury demand or nonjury. Attorneys are always confused as to when to make this request for trial de novo. Some think that the court should go back to the status conference statements, which may be old info.	important to know whether a jury or court trial is being requested, under the new case management rules, this information will already be incorporated into the case management order. The committee believes that it would create confusion for this form to also request this information.
11.	Elizabeth Strickland Superior Court of Santa Clara County	A	N	I like the form. It will be very helpful to pro pers. It would be more helpful, however, if the filing fee question could be clarified.	See response to the comments of Ms. Simonian above.
12.	Unknown Superior Court of Ventura County	A	N	No comment.	No response necessary.
13.	Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission	A	N	No comment.	No response necessary.
14.	Charlene Walker Superior Court of Sacramento County	A	N	No comment.	No response necessary.
15.	Joe Yniquez Supervising Legal Clerk I Superior Court of Stanislaus County	A	N	No comment.	No response necessary.